

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

WEST VIRGINIA MEDICAL INSTITUTE, INC.,

Plaintiff,

v.

**Civil Action No.: 2:15-cv-13449
(Hon. Thomas E. Johnston)**

**INNOVATIVE RESOURCE GROUP, LLC
d/b/a APS HEALTHCARE MIDWEST, a
Wisconsin Limited Liability Company,
KEPRO ACQUISITIONS, INC., a Pennsylvania
Corporation, WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION,
PURCHASING DIVISION, a West Virginia
Agency, WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,
a West Virginia Agency,**

Defendants.

DEFENDANT DHHR’S RESPONSE TO MOTION TO REMAND

Defendant West Virginia Department of Health and Human Resources (“DHHR”), by counsel, hereby responds to Plaintiff’s Motion to Remand [ECF 13], as ordered by this Court on October 2, 2015 [ECF 16]. DHHR did not consent to removal, and while it maintains that it must be dismissed from this action, it takes no position on the merits of the removal of this action from State court or on the merits of the motion to remand. Simply put, DHHR has no interest in this litigation whatsoever.

This is a commercial lawsuit between three companies that maintain a prime contractor and subcontractor relationship with one another. Plaintiff does not allege any facts against DHHR or seek any relief from it. Instead, Plaintiff appears to have joined DHHR as a defendant solely because it believes that DHHR is a necessary party. [ECF 13 at 6.] Specifically, Plaintiff

argues that a change order by DHHR is necessary for Defendants APS and KEPRO to replace Plaintiff as the subcontractor on the Prime Contract. [*Id.*] But Plaintiff misconstrues the purpose of necessary party joinder under Rule 19.

Rule 19 is intended to preserve the policies of “avoiding multiple litigation, providing the parties with complete and effective relief in a single action, and protecting the absent persons from the possible prejudicial effect of deciding the case without them.” Wright, Miller, & Kane, 7 Fed. Prac. & Proc. Civ. § 1604 (3d ed.). Forcing DHHR to remain in this litigation, however, will not achieve any of these objectives, as any ruling on this issue will not require DHHR to take any action or affect its interests in any way. So long as West Virginia Medicaid services are not interrupted—which they have not been—DHHR has no interest at stake in this litigation. And if services are interrupted, then DHHR will take whatever legal action is required to restore those services. But as Plaintiff notes in its Motion, DHHR did not expressly consent to removal, and it takes no position regarding the Motion to Remand.

Respectfully submitted,

WEST VIRGINIA DEPARTMENT OF HEALTH
AND HUMAN RESOURCES,
Defendant,

By counsel,

PATRICK MORRISEY
ATTORNEY GENERAL

/s/Christopher S. Dodrill

Christopher S. Dodrill (11040)

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CERTIFICATE OF SERVICE

I, Christopher S. Dodrill, hereby certify that on October 8, 2015, I caused a true and correct copy of “Defendant DHHR’s Response to Motion to Remand” to the following via ECF notification:

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